

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE OF OHIO, :
 :
 Plaintiff-Appellee, :
 : No. 107918
 v. :
 :
 SANDRA STIH, :
 :
 Defendant-Appellant. :

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: August 15, 2019

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-18-630301-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and James D. May, Assistant Prosecuting Attorney, *for appellee*.

John P. Parker, *for appellant*.

RAYMOND C. HEADEN, J.:

{¶ 1} Defendant-appellant Sandra Stih (“Stih”) appeals from her sentence following a guilty plea. For the reasons that follow, we affirm.

Factual and Procedural History

{¶ 2} On July 5, 2018, the Cuyahoga County Grand Jury indicted Stih on three counts of aggravated theft, one count of telecommunications fraud, five counts of money laundering, and nine counts of forgery. This indictment was the result of Stih's stealing from her employer, Alpha Tool & Mold, Inc. ("Alpha"), over the period of several years. In total, Stih's theft against Alpha was over \$313,000.

{¶ 3} On October 1, 2018, the court held a group-plea hearing. The court conducted a Crim.R. 11 colloquy and informed Stih that she faced a sentence between two and eight years in prison. Stih pleaded guilty to one count of telecommunications fraud, in violation of R.C. 2913.05(A), a felony of the second degree. The remaining 17 counts in the indictment were nolle. The court referred Stih to the probation department for the preparation of a presentence investigation report ("PSI").

{¶ 4} On November 1, 2018, the court held a sentencing hearing. The court heard from defense counsel, several representatives of Alpha, the prosecutor, and Stih. Defense counsel noted that Stih had paid back approximately \$14,000 to Alpha and argued that this showed that she had accepted responsibility, expressed remorse, and was a form of restitution. The Alpha representatives testified that Stih's actions financially crippled the company. Alpha is a family-run company, and its owners resorted to exhausting their personal lines of credit, and, in one case, obtaining a second home mortgage to keep the business afloat. The prosecutor recommended a sentence of four or five years to the court. Stih expressed remorse

for her conduct and stated that she was receiving counseling. The court sentenced Stih to six years in prison and three years of postrelease control.

{¶ 5} Stih appealed her sentence, presenting one assignment of error for our review.

{¶ 6} On January 21, 2019, Stih filed a motion to supplement the record with the PSI, and this court granted that motion.

Law and Analysis

{¶ 7} In her sole assignment of error, Stih argues that her sentence is contrary to law and not supported by the record.

{¶ 8} Pursuant to R.C. 2953.08(G)(2), a reviewing court may increase, reduce, or otherwise modify a felony sentence if it clearly and convincingly finds that either (a) the record does not support certain required statutory findings or (b) the sentence is otherwise contrary to law. A sentence is contrary to law if the court fails to consider the purposes and principles of felony sentencing set forth in R.C. 2929.11 and the sentencing factors set forth in R.C. 2929.12.

{¶ 9} R.C. 2929.11(A) establishes that the overriding purposes of felony sentencing are to protect the public from future crime by the offender, to punish the offender, and to promote the effective rehabilitation of the offender using the minimum sanctions that the court determines will accomplish those purposes. While sentencing courts have discretion to determine how best to comply with these purposes, R.C. 2929.12 provides a list of factors that courts must consider in felony sentencing. Courts must carefully consider these purposes and factors, but “it is not

necessary for the trial court to articulate its consideration of each individual factor as long as it is evident from the record that the principles of sentencing were considered.” *State v. Gonzalez*, 8th Dist. Cuyahoga No. 102579, 2015-Ohio-4765, ¶ 6, citing *State v. Roberts*, 8th Dist. Cuyahoga No. 89236, 2008-Ohio-1942, ¶ 10.

{¶ 10} Further, sentencing courts are empowered to impose a prison sentence within the statutory range and are not required to make certain findings before imposing more than the minimum sentence. *State v. Blevins*, 2017-Ohio-4444, 93 N.E.3d 246, ¶ 30 (8th Dist.), citing *State v. Sargent*, 148 Ohio St.3d 94, 2016-Ohio-2696, 69 N.E.3d 627, ¶ 34. Stih’s six-year sentence in this case was within the statutory range of two to eight years. Therefore, her sentence can only be contrary to law if the trial court imposed the sentence without considering the principles and purposes of felony sentencing in R.C. 2929.11 and 2929.12 discussed above.

{¶ 11} This court has held that even where a trial court does not reference its consideration of R.C. 2929.11 and 2929.12 at the sentencing hearing or in its sentencing journal entry, “it can be presumed that the trial court considered the relevant sentencing factors under R.C. 2929.11 and 2929.12 unless the defendant affirmatively shows otherwise.” *State v. Jung*, 2018-Ohio-1514, 111 N.E.3d 54, ¶ 16 (8th Dist.), citing *State v. Jones*, 8th Dist. Cuyahoga No. 99759, 2014-Ohio-29, ¶ 13. *See also State v. Esner*, 8th Dist. Cuyahoga No. 90740, 2008-Ohio-6654, ¶ 10.

{¶ 12} Stih has not affirmatively shown that the trial court failed to consider R.C. 2929.11 and 2929.12. Stih argues that the court impermissibly based her

sentence on information that was not disclosed to the defense, namely, her 2014 conviction for grand theft. The PSI reflects that Stih pleaded guilty to one count of grand theft in Lake County in 2014, while the criminal conduct in the instant case was ongoing. Further, at Stih's sentencing hearing, the court stated that it considered the statements made at the hearing, the PSI, and the purposes and principles of felony sentencing under R.C. 2929.11 and 2929.12. The court went on to state that it found that a prison term is consistent with the purposes and principles set forth in R.C. 2929.11 and that prison is commensurate with the seriousness of Stih's conduct and its impact on the victims. Finally, these findings were included in the corresponding sentencing journal entry.

{¶ 13} For these reasons, Stih's sentence is not contrary to law.

{¶ 14} Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

RAYMOND C. HEADEN, JUDGE

LARRY A. JONES, SR., J., CONCURS;
MARY EILEEN KILBANE, A.J., DISSENTS WITH SEPARATE OPINION

MARY EILEEN KILBANE, A.J., DISSENTING:

{¶ 15} I respectfully dissent. The majority finds that Stih’s sentence was not contrary to law. I disagree.

{¶ 16} A prison sentence in the instant case was not mandatory. Nevertheless, the trial court imposed six years in prison, which is three times the minimum sentence, for a single mother raising a 12-year-old child and who had not previously served a prison sentence, is mentally ill, paid back \$14,000 in restitution before sentencing, obtained a new job that paid \$17 per hour, and was in mental health counseling.

{¶ 17} On this record, imprisoning her for six years does not advance the two primary purposes of felony sentencing, that is, to “protect the public” from Stih and punish her using “minimum sanctions.” R.C. 2929.11(A). There is no indication that the trial court considered the minimum sentence, let alone that it engaged in the required analysis when it chose to sentence Stih to a six-year prison sentence, when prison was not mandatory. Therefore, I would remand to the trial court for resentencing.

